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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,061	04/12/2004	Dennis Kujawski	760-183	3986
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HOFFMANN & BARON, LLP 6900 JERICO TURNPIKE SYOSSET, NY 11791			EXAMINER IZQUIERDO, DAVID A	
			ART UNIT 3738	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,061

Applicant(s)

KUJAWSKI, DENNIS

Examiner

David A. Izquierdo

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34, 36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) 22-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 34, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed 5 June 2007 have been fully considered but they are not persuasive. Applicant has argued that the U.S.C. 35 102(e) rejection in view of Nunez et al. ("Nunez") is improper because Nunez does not contain pedal-like projections which are non-tubular. However, this limitation merely describes a preferred embodiment within the specification and is not mentioned within the claim language. The phraseology "pedal-like" is a very broad limitation and provides little structural basis from which to compare with prior art. Should Applicant further limit the claim language to better define the "pedal-like projections" the instant application may be allowable over the prior art of record.

2. Applicant has further argued that the Nunez reference fails to anticipate "a bulbous woven portion having opposed first and second ends, the first bulbous end having a greater number of warp yarns interlaced with said fill yarns in a flat-woven tubular bulbous pattern contiguously woven from said second tubular end to provide a seamless woven, wherein the greater number of warp yarns are threadingly engaged with said fill yarns to define a flat-woven bulbous diameter" but provides no reasoning as to why the prior art reference fails meet the claimed limitations. Examiner has provided ample evidence as to why the Nunez reference anticipates the aforementioned limitation within the rejections of the previous Office Action.

3. In response to Applicant's arguments directed toward the 35 U.S.C. 103(a) rejection, Examiner has **not** provided any statements "in direct contrast to the section 102 rejections" as presented in the previous Office Action. Applicant has made no mention

Art Unit: 3738

of non-tubular woven projections outside of claims 34-37 therefore a 35 U.S.C. 102 (e) rejection regarding non-tubular claims could not have been made.

4. Examiner has properly rejected claims 34-37 under 35 U.S.C. 103(a) as presented in the previous rejection. In response to applicant's argument that a literal combination of the Nunez reference with the Ehrenfeld (USPN 5,156,619) reference is improper, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

6. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Art Unit: 3738

7. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 3, 4, 18-21, 34 and 35 are provisionally rejected on the ground of nonstatutory double patenting over claims 32, 35, 39-41, and 44-46 of copending Application No. 10/823,456. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

9. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The co-pending application as well as the instant application both claim a hollow tubular woven portion with a number of warp yarns and fill yarns defining a flat-woven tubular diameter and a bulbous woven portion having a greater number of warp yarns than fill yarns.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Nunez et al. (hereafter "Nunez")(U.S. Patent Application Publication Number 2003/0078650).

Art Unit: 3738

12. In reference to Figure 18, Nunez discloses vascular graft comprising a hollow tubular woven portion 917 having first and second ends and a number of warp yarns interlaced with a number of fill yarns in a flat-woven tubular woven pattern (Paragraph 0015) utilizing a plain weave (Paragraph 0045) wherein the warp yarns and fill yarns are single ply, between 20 and 1000 denier and are comprised of polyester (paragraph 0058).

13. Nunez further discloses a bulbous end scalloped with three contoured, pedal-like projections (914 a-c) which seamlessly extend from the hollow tubular woven portion 917 wherein the graft can be crimped (Paragraph 0063) and the edges can be made from a heat-fusible yarn (Paragraphs 0061-0063).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 34, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nunez in view of Ehrenfeld (U.S. Patent Number 5,156,619).

16. Nunez discloses a vascular graft as disclosed above however Nunez fails to disclose a vascular graft comprising non-tubular ends as required by claim 34. Ehrenfeld teaches a vascular graft with a non-tubular flange located on the end. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine a flanged, non-tubular end as taught by Ehrenfeld to the vascular graft, as per Nunez the

Art Unit: 3738

motivation to combine being that the flanged end allows for better compatibility with the anatomy of the aortic arch (Ehrenfeld: col. 1, lines 50-60).

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943. The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo



Patent Examiner



ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER